

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JAMAL HART, :

Plaintiff, :

No. 3:08-CV-0828

v. :

WALTER WHALEN, :

(Judge Kosik)

Defendant, :

**FILED
SCRANTON**

MAR 22 2011

ORDER

PER M. E. P.
DEPUTY CLERK

AND NOW, THIS 22nd DAY OF MARCH, 2011, IT APPEARING TO THE
COURT THAT:

(1) Plaintiff, Jamal Hart, an inmate confined at The Troy House, Durham, North Carolina filed the instant civil rights action pursuant to 28 U.S.C. §1331 on May 5, 2008;

(2) The matter was assigned to Magistrate Judge Thomas M. Blewitt;

(3) Following an extensive procedural history, only one defendant remains in this action, Defendant Walter Whalen;

(4) The basis of plaintiff's action is that while plaintiff was confined at FCI-Schuylkill, Minersville, Pennsylvania, Defendant Whalen violated plaintiff's Fifth Amendment Equal Protection rights by treating him differently than similarly situated inmates without a rational purpose for doing so, based on the identity of Plaintiff's father;

(5) A motion to dismiss and for summary judgment (Doc. 48) was filed by defendant Whalen on May 21, 2010;

(6) On February 7, 2011, the Magistrate Judge filed a Report and Recommendation (Doc. 67), wherein he recommends that Defendant Whalen's Motion for Summary Judgment be granted. Specifically, the Magistrate Judge found that the plaintiff failed to exhaust his administrative remedies on the Equal Protection claim. Moreover, the Magistrate Judge also found that even if the Equal Protection

claim had been exhausted, based on the record before him, plaintiff cannot establish his class of one Equal Protection claim;

(7) Plaintiff did not file objections to the Report and Recommendation of the Magistrate Judge¹;

(8) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. §636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(9) We have reviewed the thorough Report of the Magistrate Judge and we agree (1) that plaintiff failed to exhaust his administrative remedies against Defendant Whalen on the Equal Protection claim and (2) that even if plaintiff had exhausted, plaintiff failed to establish a class of one Equal Protection claim with respect to Defendant Whalen. Thus, Defendant's motion for summary judgment will be granted.

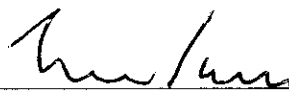
ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated February 7, 2011 (Doc. 67) is **ADOPTED**;

(2) The motion for summary judgment of Defendant Whalen (Doc. 48) is **GRANTED**;

(3) Judgment is hereby entered in favor of Defendant Whalen and against Plaintiff; and

(4) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.


Edwin M. Kosik
United States District Judge

DATED: March 22nd 2011.

¹Plaintiff sought and received an extension of time to file objections to the Report and Recommendation until March 17, 2011. (Doc. 69). To date, no objections have been filed.